

.1.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6045 OF 2004

M/s Godfrey Philips (India) Ltd .. Petitioner

vs

Minal Girish Patel & ors .. Respondents

..

Mr.G.S.Godbole i/b M/s Salgaonkar & Co for Petitioner

Ms Ranjana Parekh for Respondents

..

CORAM : D.G.KARNIK, J

DATE: 12TH AUGUST, 2004.

P.C.

1. Heard learned counsel for the parties.

2. This petition arises out of rejection of an application made by the petitioner for stay of a suit for possession filed against it under the Transfer of Property Act, 1882.

3. The petitioner is a large public limited company having paid up capital of more than Rupees one crores. The suit premises were let out to the petitioner by the

respondents several years ago. Even after the expiry of the tenancy, the petitioner continued in possession claiming protection under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short the Bombay Rent Act). The respondents therefore filed a a suit for eviction of the petitioner bearing Suit No.426/1616 of 1982 under the provisions of the Bombay Rent Act. The suit was decreed on 30th November, 1985 and an appeal bearing No.235 of 1986 is pending before the appellate Bench of the Small Causes Court, Mumbai. The provisions of the Bombay Rent Act were repealed with effect from 31st March 2000 by Maharashtra Rent Control Act, 1999. Sub-section (b) of section 3 of the Maharashtra Rent Control Act provides that it shall not be applicable inter alia to a public or a private companies having paid up capital of more than Rupees one crore. Section 58 of the Maharashtra Rent Control Act, however saves the pending proceedings instituted under the provisions of the Bombay Rent Act which at the option of the landlord are to be continued as if the Bombay Rent Act has not been repealed.

4. On repeal of the Bombay Rent Act, the respondents filed another suit bearing Suit no.184/194 of 2002 for possession under the provisions of general Law -Transfer of Property Act, 1882. In that suit, an application was made by the petitioner for stay of the suit which was

rejected by the Small Causes Court by an order dated 17th April, 2004. That order is impugned in this writ petition.

5. In Dilip Prabhakar Dingorkar vs Hindustan Petroleum Corporation Ltd (C.R.A. No.1191 of 2001) decided on 18th January, 2002 (Coram: Dr.D.Y.Chandrachud, J) this Court while considering an identical situation has held that the cause of action for the suit for possession under the Bombay Rent Act and a suit for possession under the Transfer of Property act are different. The cause of action for a suit under the Rent Act is existence of a ground for eviction under the Rent Act while the cause of action for a suit for possession under the general law-Transfer of Property Act, 1882 is the termination of tenancy either by efflux of time or by notice. The Court further held that as the causes of action for the two suits are different and two suits can be proceeded simultaneously. The said view was followed by this Court in Godrej & Boyce Mfg.Co Ltd vs Sridhar Jagannath Nerurkar (Civil Revision Application No.58 of 2004) decided on 6th July 2004 (Coram : D.G.Karnik, J).

6. Learned counsel for the respondents states that another learned Single Judge of this Court has also taken an identical view in Krishnan Lal Malhotra vs Smt Leela Shantikumar Gandhi (Writ Petition No. 5667 of

2003 with Writ Petition No.5668 and 5669 of 2003 decided on 21st November, 2003 (Coram: Smt Nishita Mhatre, J). Thus, this Court has consistently taken a view that during the pendency of a previous suit filed under the Bombay Rent Act, a landlord is entitled to file a second suit for possession under the Transfer of Property act against a tenant to whom the provisions of Maharashtra Rent Control Act, 1999 are not applicable.

7. In view of this, the decision of the trial Court in rejecting the application in my view, is right.

8. Petition rejected.

9. At the request of the learned counsel for the petitioner, operation of this order is stayed for a period of four weeks.

10. Authenticated copy allowed.

D.G.KARNIK, J